IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 252 of 1999

with

SPECIAL CRIMINAL APPLICATION No.712 of 1999

with

MISCELLANEOUS CRIMINAL APPLICATION NO.5731 1999
in
SPECIAL CRIMINAL APPLICATION No.712 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No.

HIRABHAI GODADBHAI PATEL

Versus

SAHEBKHAN NATHEKHAN PATHAN

Appearance:

SPECIAL CRIMINAL APPLICATION NO.252 OF 1999

MS KUSUM M SHAH for Petitioner

MR MH RATHOD for Respondent No. 1

MR RC JANI for Respondent No. 2

NOTICE SERVED for Respondent No. 3

MR LR POOJARI, APP for Respondent No. 5

SPECIAL CRIMINAL APPLICATION NO.712 OF 1999
MR RC JANI for Petitioner
MR HL JANI, APP for Respondent No. 1
UNSERVED-REFUSED (N) for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 3, 4

CRIMINAL MISC. APPLICATION NO. 5731 of 1999
MR MH RATHOD for applicant
MR HL JANI, APP for opponent No.1-State.
MS KUSUM M SHAH for opponent No.2
MR RC JANI for opponent No.4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 09/05/2000

COMMON C.A.V. JUDGEMENT

Both the Special Criminal Application Nos.712/99 and 252/99 have been arisen from the order passed by court below in Criminal Case No.74/98 which has been filed by complainant Hirabai Godadbhai Patel against one Sahebkhan Nathekhan Pathan, Champalal and Sohanlal under Sections 420, 406 and 114 of the Indian Penal Code. After verifying the same, on 18-6-98 learned J.M.F.C., Deesa passed an order under Section 156 (3) of the Code of Criminal Procedure and directed the P.S.I., Bhildi to inquire into the matter and submit the report. On receiving the same, Bhildi Police Station has registered the same as M. Case No.7/98 and started investigation. During the course of investigation, the Police Officer, after drawing the panchnama, has taken custody of the muddamal vehicle Tata Truck bearing registration No.G.R.W. 305 from the garage of one Ramsahay Hanumansahay Sharma at Vadali, Tal. Khedbrahma, District Sabarkantha and from that date, the custody of the said vehicle is with the police.

2. Meanwhile, petitioner of Special Criminal Application No.252/99, Hirabai Godadbhai Patel had filed an application Ex.6 before the learned Chief Judicial Magistrate on 17-7-98 whereas petitioner of Special Criminal Application No.712/99 Champalal Rekhchand Pincha had filed an application Ex.7 and respondent No.2 of Special Criminal Application No.712/99 and respondent No.1 of Special Criminal Application No.252/99 Sahebkhan Nathekhan Pathan had also filed an application Ex.22 praying interim custody of the truck in question under

Section 451 of the Code of Criminal Procedure. As above claimants have claimed interim custody of the truck in question, the learned J.M.F.C. has decided to hear and decide the same together, and therefore, he has heard applications Exs.6 and 22 together and after hearing learned counsel for the respective parties, passed a common order. Against that order, petitioner of Special Criminal Application No.252/99, Hirabhai had preferred Criminal Revision Application No.8/99 whereas petitioner of Special Criminal Application No.712/99, Champalal, property partner of Balaji Credit Corporation had filed Criminal Revision Application No.15/99 before the District Court, Banaskantha at Palanpur. Both the above numbered Criminal Revision Applications came up for hearing before the Addl. Sessions Judge, Banaskantha at Palanpur and learned Addl. Sessions Judge rejected Criminal Revision Application No.8/99 on 3-3-99 and Criminal Revision Application No.15/99 on 9-6-99 and confirmed the order passed by the learned J.M.F.C. granting interim custody of the vehicle under Section 451 of the Code of Criminal Procedure to respondent No.2 of Special Criminal Application No.712/99 and respondent No.1 of Special Criminal Application No.252/99. Against the order passed in above two Criminal Revision Applications, original complainant of Criminal Case No.74/98 had preferred Special Criminal Revision Application No.252/99 and one Champalal Pincha, petitioner of Criminal Revision Application No.15/99 has preferred Special Criminal Application No.712/99.

3. As both the Special Criminal Applications arise out of same order passed by the court below in Criminal Case No.74 of 1998 and as the Misc.Cri.Application arises out of the ad-interim order passed in Special Criminal Application No.712 of 1999, I have heard all these together and decide by this common judgment.

4. In Special Criminal Application No.252/99 the Court issued notice which was made returnable on 19-4-99. In the said petition petitioner of Special Criminal Application No.712/99 is also one of the respondents i.e. respondent No.2 whereas in Special Criminal Application No.712/99, this Court (Coram: A.K.Trivedi, J.) vide order dated 13-8-1999 passed the following order at the admission stage:

> "Rule. Mr.K.T.Dave, ld. APP waives service of rule on behalf of respondent No.1. Notice as to interim relief returnable on 7-9-1999. In the meanwhile, ad-interim relief in terms of para 10(B) is granted till then. D.S. permitted."

Interim relief which has been prayed by the petitioner of Special Criminal Application No.712/99 reads as under :

> "Pending admission and final disposal of this petition, stay the implementation, execution and operation of the order passed by the Assistant Extra Assistant Judge, Banaskantha, below Ex.10 dated 9-6-99 and be further pleased to hand over the possession of the disputed truck to the petitioner forthwith."

5. As per the above interim relief granted by this Court, process has been sent by the office in the Court of learned J.M.F.C., Deesa. Thereafter, petitioner of Special Criminal Application No.712/99 submitted one application before the learned J.M.F.C. on 6-9-99 praying to hand over the custody of the truck in view of the order passed by this Court. On receiving the said application, learned J.M.F.C. has passed the order on the said day directing the office to send the yadi to the police station for obtaining custody of the muddamal and to produce the same before the Court. Respondent No.2 of Special Criminal Application No.712/99 when came to know about the development in the matter, had submitted one application before the learned J.M.F.C. stating that he has filed proceedings in the High Court of Gujarat and the same are pending and, therefore, order passed by the learned J.M.F.C. on 6-9-99 upon the application of the present petitioner be stayed. Learned J.M.F.C. has rejected the said application of the respondent No.2 of Special Criminal Application No.712/99. Learned counsel for the respondent No.2 of Special Criminal Application No.712/99 has produced xerox copies of the above three applications which are ordered to be taken on record. Said respondent No.2 has also filed Misc.Cri.Appln. No.5731 of 1999 in Special Criminal Appln. No.712 of 1999 for vacating the ad-interim relief granted on 13-8-1999 in Special Cri. Appln. No.712 of 1999.

6. I have heard Ms.K.M.Shah, learned counsel for the petitioner of Special Cri. Appln. No.252 of 1999, Mr.R.C.Jani, learned counsel for the petitioner of Special Cri. Appln. No.712 of 1999, Mr.Mehul H.Rathod, learned counsel for the applicant of Misc.Cri.Appln. No.5731 of 1999 in Special Cri. Appln. No.712 of 1999, Mr.H.L.Jani and Mr.L.R.Poojari, learned APPs. for the respondent-State in respective petitions. I have gone through the reasoned order passed by the court below in Criminal Revision Application Nos.8 of 1999 and 15 of

1999 and also common order passed upon application Exs.6, 7 and 22 by the learned Judicial Magistrate First Class, Deesa, Court No.3 in M.Case No.7 of 1998 which has arisen from Criminal Inquiry No.74 of 1998. I have also gone through the documentary evidences relied upon by the parties before the court below.

7. Present petitions have been filed by the petitioners against two concurrent orders of the courts below and, therefore, interference of this Court would be restricted to limited aspect of the matter. Facts remain that as per the R.T.O. record, respondent No.2 of Special Cri. Application No.712 of 1999, i.e. Sahebkhan Nathekhan Pathan is the owner of the vehicle. Though parties have tried to establish that the vehicle in question has been sold and transferred in favour of the petitioners, the fact is that said Sahebkhan Nathekhan Pathan is having better title of the vehicle than other persons.

8. Learned counsel for the petitioner of Special Criminal Application No.712 of 1999, Mr.R.C.Jani, relying upon various judgments including the judgment reported in 1993 Cri. Law Journal pages 1069 and 2484, has argued that petitioner is the financier who has advanced money to respondent No.2 and there is an agreement between them.

9. There cannot be any dispute regarding the principles laid down by the Court in the above referred judgment. But what is required to be seen at this stage is the ownership of the vehicle. At the cost of repetition, I may say that respondent No.2 of Special Criminal Application No.712 of 1999, namely Shri Sahebkhan Nathekhan Pathan is having better title of the vehicle in question over other parties of the present proceedings and, therefore, concurrent orders passed by the courts below are not required to be interfered on the ground of facts as it is only an interim custody. While passing the order, it appears that courts below have taken sufficient care and caution and whoever succeeds ultimately in the matter, then their interest will be protected accordingly.

10. It has been held in a case reported in AIR 1967 (Guj.) 80 that possession is not by itself a true criterion for granting a custody. Person in whose name vehicle is with the registering authority is entitled to custody of it unless any other person establishes superior title. Here in this case, present petitioners of Special Cri. Application Nos.252/99 and 712/99 could

not establish their superior title over Mr.Sahebkhan Nathekhan Pathan. In other words, name of Mr.Sahebkhan Nathekhan Pathan stands with the registering authority as the owner of the vehicle and when he is having a better title of the vehicle in question over other parties to the present proceedings, it is required to be given to said Sahebkhan Nathekhan Pathan. Therefore, court below has rightly passed order in favour of said Sahebkhan Nathekhan Pathan and has given custody of the vehicle which has been rightly confirmed by the revisional court and these are the two concurrent orders of the courts below. When petitioners of both Special Criminal Applications have failed to show any illegality in the order passed by the courts below warranting interference by this Court, I do not think it fit to interfere with the same and, therefore, both the petitions are required to be rejected.

11. In view of the above facts and circumstances, both the Special Criminal Applications are hereby rejected. Rule issued in Special Cri. Application No.712 of 1999 stands discharged. Ad-interim relief granted in Special Cri. Appln. No.712 of 1999 also stands vacated forthwith. Notice issued in Special Cri. Application No.252 of 1999 stands discharged.

12. In view of the above order passed in Special Criminal Applications, Misc.Cri.Appln.No.5731 of 1999 in Special Cri.Appln.No.712 of 1999 does not survive and is disposed of accordingly.

13. Office is directed to keep original order in Special Criminal Application No.252 of 1999 and a copy each in Special Criminal Application No.712 of 1999 and Misc.Cri.Application No.5731 of 1999.

(R.P.DHOLAKIA,J.)
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